

IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1997

**SWIDLER & BERLIN AND JAMES HAMILTON,**  
*Petitioners,*

v.

**UNITED STATES OF AMERICA,**  
*Respondent.*

**On Writ of Certiorari to the  
United States Court of Appeals  
for the District of Columbia Circuit**

**JOINT APPENDIX**

**JAMES HAMILTON \***  
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**PETITION FOR CERTIORARI FILED DECEMBER 31, 1997**  
**CERTIORARI GRANTED MARCH 30, 1998**

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## NOTICE

The following items have been omitted in printing this Joint Appendix because they appear on the following pages in the printed Appendix to the Petition for a Writ of Certiorari:

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Sealed Case, Nos. 95-446 and 95-447

CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES

Date	Proceedings
December 4, 1995	Grand Jury Subpoenas to James Hamilton and Swidler & Berlin
December 18, 1995	Motions to Quash or Modify Grand Jury Subpoenas; Memorandum in Support of Motions; Affidavit of Sheila Anthony; Affidavit of James Hamilton
December 26, 1995	Motion of Independent Counsel to Compel Production of Documents and a Privilege Log; Memorandum in Support of Motion
February 5, 1996	Memorandum in Opposition to Independent Counsel's Motion to Compel a Privilege Log and Production of Documents
February 12, 1996	Independent Counsel's Reply to Opposition to Motion to Compel Production of Documents and Privilege Log
February 20, 1996	Sur-Reply to Independent Counsel's Reply to Opposition to Motion to Compel Production of Documents and Privilege Log
June 21, 1996	Order: that by July 1, 1996 all documents responsive to subpoena, except those which are privileged, shall be produced to Independent Counsel; and all documents for which privilege is asserted shall be submitted to the Court for <i>in camera</i> review

Date	Proceedings
July 9, 1996	Privilege Log
July 12, 1996	Amended Privilege Log
July 16, 1996	Independent Counsel Memorandum in Support of Opposition to Motions to Quash or Modify Grand Jury Subpoenas
July 26, 1996	Reply Memorandum in Support of Motions to Quash or Modify Grand Jury Subpoenas; Third Affidavit of James Hamilton
December 16, 1996	Memorandum Order: motions to quash or modify grand jury subpoenas denied in part and granted in part; motions to modify granted and Swidler & Berlin and James Hamilton not required to produce documents described in privilege log
January 15, 1997	United States' Notice of Appeal

UNITED STATES COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

*In re Sealed Case*, Nos. 97-3006 and 97-3007

CHRONOLOGICAL LIST OF  
RELEVANT DOCKET ENTRIES

Date	Proceedings
January 27, 1997	Case docketed; Order consolidating cases and setting briefing schedule
March 28, 1997	Brief of Appellant United States; Appellant's Appendix
April 28, 1997	Brief of Appellees Swidler & Berlin and James Hamilton
May 12, 1997	Reply Brief of Appellant United States
June 13, 1997	Letter filed by Appellant advising of additional authorities re attorney-client privilege
June 19, 1997	Letter filed by Appellee submitting James Hamilton's notes of July 11, 1993 for <i>in camera</i> Review
June 20, 1997	Oral Argument held before Judges Wald, Williams and Tatel
August 29, 1997	Judgement and Opinion reversing and remanding case to United States District Court; Dissenting Opinion of Judge Tatel
October 8, 1997	Appellees' Petition for Rehearing With Suggestion for Rehearing En Banc
October 27, 1997	Appellant's Response to Petition for Rehearing and Suggestion for Rehearing En Banc

Date	Proceedings
November 21, 1997	Order Denying Petition for Rehearing; Order Denying Suggestion for Rehearing En Banc; Dissenting Opinion of Judges Tatel and Ginsburg
January 12, 1998	Order unsealing certain record documents, provided certain redactions are made
April 23, 1998	Order granting Appellant's motion to unseal a portion of the record and granting Appellees' alternative request contained in response to Appellant's motion

**Excerpt from Affidavit of James Hamilton executed December 18, 1995 in Sealed Case, U.S. District Court for the District of Columbia, Nos. 95-446 and 95-447.**

[The portion of the affidavit printed below has been unsealed in accordance with the Order of the United States Court of Appeals for the District of Columbia Circuit issued April 23, 1998 in *In re Sealed Case*, No. 97-3006. The remainder of the affidavit remains under seal.]

34. On July 11, 1993, Mr. Foster conferred with me regarding the possibility of my being retained by the White House, or perhaps him if I did not represent the White House, in connection with certain matters that had occurred at the White House. He made clear at the outset that this was a "privileged" conversation. From the very beginning of the conversation I understood that I was being considered for retention regarding the investigations Mr. Foster anticipated and any ensuing litigation, which also was probable. In fact, litigation regarding the matter we discussed has occurred. I have notes on this conversation, which contain information provided by Mr. Foster, as well as my mental impressions, observations, conclusions, and plans for action. These notes are my work product and are properly characterized as core work product.

**Excerpt from Affidavit of James Hamilton executed  
July 25, 1996 in Sealed Case, U.S. District Court  
for the District of Columbia, Nos. 95-446 and 95-447.**

[The portion of the affidavit printed below has been unsealed in accordance with the Order of the United States Court of Appeals for the District of Columbia Circuit issued April 23, 1998 in *In re Sealed Case*, No. 97-3006. The remainder of the affidavit remains under seal.]

7. During my privileged meeting with Mr. Foster on July 11, 1993, I discussed with him his need for personal representation as well as my possible representation of the White House.